IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7900 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARESH DEVENDRABHAI JANI

Versus

COMMISIIONER OF POLICE

Appearance:

MR MD.CHAND QURESHI for Petitioner No. 1

MS MITA PANCHAL, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 13/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 12.05.2003 passed by the Police Commissioner, Surat City, against

him, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "dangerous person" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 12.5.2003.

2. The grounds of detention served upon the petitioner and as placed on record reveal that the detaining authority relied upon the fact of in all three crimes registered against the petitioner on 5.2.2003, on 4.2.2003 and 1.12.2002 under Section 379 of the Indian Penal Code for the theft of Hero Honda Motorcycle, Reliance Mobile and Maruti Van car. The detaining authority also relied upon two in-camera statements as recorded by the sponsoring authority on 22.4.2003 and verified by the detaining authority on 9.5.2003 revealing unreported incidents occurred on 14.3.2003 and 18.3.2003, whereby the chronological activities of the petitioner is disclosed and the tendency of petitioner to pick up the quarrels with citizens is also revealed. From the above material the order of impugned came to be passed by the detaining authority.

3. Learned Advocate Mr.MD Chand Qureshi for petitioner and learned AGP Ms. Mita Panchal were heard at length. Affidavit-in-reply as filed by the detaining authority and as placed on record is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner and controverted by the AGP, the matter can be disposed of on the ground that whether the subjective satisfaction of the detaining authority is vitiated on the ground that the detaining authority did not take into consideration the vital aspect of the matter. The grounds placed on record and is served upon the petitioner, it is undisputable that the petitioner was in judicial custody while the order came to be passed against the petitioner and served upon him. In this respect, the detaining authority reached to the subjective satisfaction that at any time, the petitioner was likely to be released on bail and was likely to continue his illegal activities. This plea as taken in Special Civil Application is met with by the detaining authority vide para-8 of affidavit-in-reply stating that after proper application of mind, material placed before him, facts and circumstances of the case as well as legal provisions applicable to the facts of the case, the

detaining authority reached to the above subjective satisfaction. Non-application of mind before recording of the detention order ipso facto would constitute sufficient ground for quashing the order of detention. The facts of the case are squarely covered by a decision of the Apex Court in the matter of AMRUTLAL AND ORTHERS vs. UNION GOVERNMENT, THROUGH SECRETARY, MINISTRY OF FINANCE AND OTHERS, reported in AIR 2000 SC 3675. While going through the grounds again, it nowhere transpires that the detaining authority relied upon any material to reach to the subjective satisfaction that the petitioner was likely to be released on bail. The detaining authority is required to take into consideration cogent material before reaching to the subjective satisfaction that the petitioner was likely to be released on bail. Learned Advocate for the petitioner makes a statement that the petitioner neither moved any bail application nor has been released on bail so far. The petitioner is, according to learned Advocate for the petitioner, still in judicial custody in a crime registered against him. The impugned order, therefore, is required to be quashed and set aside on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Surat City, on 12.05.2003 under Section 3(2) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair